

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16244 of Ricardo Chavez, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 350.4) to allow a grocery store and delicatessen on the first floor in an R-5-B District at premises 2515 17th Street, N.W. (Square 2576, Lot 36).

HEARING DATE: **June 18, 1997**
DECISION DATE: **July 16, 1997**

ORDER

SUMMARY OF EVIDENCE

The subject site is on the first floor of 2515 17th Street, which is on the eastern side of 17th Street, between Euclid and Fuller Streets, N.W. The building at 2515 17th Street is a four story brick building. The ground floor is currently vacant. The property is located in an R-5-B District.

The building is adjacent to an alley and H.D. Cooke Elementary School. Square 2576 facing 17th Street consists entirely of four story residential buildings. The records show that the last use of the subject site was a 20-seat non-sexually oriented private club. A certificate of occupancy dated December 29, 1995 was issued for this use. Prior to the applicant's purchase of the building, the first floor was vacant and continues to be so. The applicant stated that he purchased the property in January 1995. He has rented two floors and his family lives on one of the remaining floors. The applicant is proposing to use the first floor as a grocery store and delicatessen.

ISSUES AND ARGUMENTS

- 1. Whether there exists a unique or exceptional situation or condition related to the property which creates an undue hardship for the applicant in complying with the Zoning Regulations?**

The applicant argued that the subject site is unique and affected by exceptional conditions in the following ways:

- (a) There is no grocery store on the western side of Square 2576.
- (b) The existing configuration of the subject space is more compatible with the proposed use than with residential uses.

- (c) The cost to renovate the subject site to meet the zoning requirements would be prohibitive and thus would present an undue hardship to the applicant.
- (d) The applicant argued that, in his opinion, his grocery store and delicatessen would provide a community service, and repair the damage done to the community's image by the negative impact of the prior use.

2. Whether the property can be used for any other purpose permitted under the Zoning Regulations?

The applicant stated that the condition of being a nonconforming site created an undue hardship for him in his effort to comply with the Zoning Regulations. He stated that he had effected extensive and costly renovations on the subject site which were structured to accommodate the type of use he was proposing as compared to the zoning requirement of residential use. On-site toilet facilities consist of a single commode and a face basin, thus presenting an undue hardship to install the required electrical and plumbing services for residential use, as required by the Zoning Regulations.

While the applicant testified that it would create an undue hardship for him to use the property for residential purposes, he did not present evidence on whether the property could be put to other permitted uses.

Research by the Office of Zoning (OZ) found Certificate of Occupancy #B173648 dated December 29, 1995, which permitted a non-sexually oriented private club to be located at the subject site. Under 11 DCMR Subsection 330.5, a private club is permitted but a grocery store is not. However, in a report dated June 12, 1997, OZ concluded that the applicant had demonstrated that he would experience an undue hardship if the Zoning Regulations were strictly applied.

One person who owns property across the street from the subject site testified in opposition to the application. He stated that he owned a similar building and he used his lower floor as a residential unit, and in his opinion the applicant could use his site similarly and remain within the requirements of the Zoning Regulations.

Another owner in the neighborhood stated that the community had long fought to minimize random conversion in its largely residential neighborhood. They supported the existing zoning and were concerned about any nonconforming use that might attempt to locate in the community.

3. Whether granting the application would be of substantial detriment to the public good?

The applicant maintains that the use variance would not be detrimental to the public good. He indicated that his proposal would be of substantial benefit to the community, given the support for his grocery store as expressed by his neighbors, and in light of the impact of the previous undesirable use. The store would generate jobs and provide a service for the neighborhood in which the applicant owns property and lives.

The applicant submitted a list of 16 neighbors who support the proposed use of the site. While the proposed use is not permitted as a matter-of-right in the R-5-B District, OZ is of the opinion that granting the requested use variance would not be detrimental to the public good.

Advisory Neighborhood Commission (ANC) 1C submitted a letter in opposition to the proposed grocery store. The ANC is of the opinion that the proposed use is inappropriate at that site, and would adversely impact the residential integrity of the block.

4. Whether allowing the proposed use will impair the intent, purpose and integrity of the zone plan?

The applicant acknowledged that the proposed use was a nonconforming use in an R-5-B District. However, he argued that he was replacing a nonconforming use with another nonconforming use that would provide a service that had strong support in the community.

While the proposed use, (grocery store/delicatessen), is not allowed as a matter-of-right in the R-5-B District, in the Office of Zoning's opinion, granting the requested use variance would not significantly impair the intent, purpose, and integrity of the zone plan.

The ANC stated that the proposed use would adversely impact the residential integrity of the block.

The owner of a neighboring property located at 1700-04 Euclid Street, stated that the use would not only be incompatible with the Zoning Regulations, it would also be incompatible with the character of the neighborhood. He stated that he did not want to see this type of activity on a block that was entirely residential.

Another neighbor who owns property at 2511 17th Street, N.W., in a letter to the Board expressed his strong opposition to the application. He stated that he was familiar with the subject property and noted that it had been residentially occupied, consistent with its R-5-B zoning, at least since 1967 and to his knowledge there was no prior nonconforming commercial use of the premises. He stated that such a conversion would defeat the current zoning plan as 2515 17th Street was designed and configured as a townhouse, has no prior commercial use, and therefore should remain a residential townhouse.

A neighboring property owner who resides at 324 12th Street, S.E., testified that the subject site was located within 30 feet of H.D. Cooke Elementary School and there was concern about the possibility of the applicant attempting to apply for an ABC license in the future. He stated that the immediate neighborhood already has a small grocery store that now serves the applicant's proposed purpose. The existing store is within 500 feet of the subject site and another small grocery store is not needed within the immediate neighborhood, nor is it desired. He is of the opinion that the proposed grocery store can only contribute to the litter and trash in this residential neighborhood. He also noted that there is no shortage of available C-1 storefronts located close by, within the commercial sector of 18th Street and Columbia Road N.W., that would accommodate the applicant's proposed use as matter-of-right. However, there is a

housing shortage in the Reed-Cooke neighborhood, and such a conversion would commercialize a residential neighborhood at the expense of that neighborhood's housing needs.

Another property owner is of the opinion that the proposed grocery store would encourage loitering, and attract other negative activities not welcomed in that neighborhood.

FINDINGS OF FACT

Based on the evidence of record, the Board finds as follows:

1. The Board had no history in dealing with the subject property, as all prior use of the site had been matter-of-right.
2. The applicant is not replacing a nonconforming use with another nonconforming use.
3. The applicant is requesting a use variance, which would replace a conforming use with a nonconforming use.
4. The certificate of occupancy for the last use of the site was for a private club, which is a conforming use in an R-5-B District. A grocery store/delicatessen is nonconforming in an R-5-B District.
5. There is another small grocery store within 500 feet of the site.

CONCLUSIONS OF LAW AND OPINION

Based on the application before the Board, the Board concludes that the applicant is seeking a variance from the use provisions to establish a grocery/delicatessen in an R-5-B District. The granting of such a use variance requires a showing through substantial evidence of a unique or exceptional situation or condition affecting the property which creates an undue hardship on the owner in complying with the Zoning Regulations. The applicant must also demonstrate that granting the application will not be of substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan. The Board concludes that the applicant has not met this burden of proof.

The Board is of the opinion that the application is not faced with an undue hardship which arises out of the property itself. Further, the Board concludes that there are allowable uses for the property, which do not require variance relief. Having determined that the proposed use would impair the intent of the zone plan, the Board concludes that it is unnecessary to address the other use variance tests.

In light of the foregoing analysis, the Board **ORDERS** that the application be **DENIED**.

VOTE: 3-0 (John G. Parsons, Laura M. Richards, Sheila Cross Reid to deny; Susan Morgan Hinton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 

MADELIENE H. DOBBINS
Director

FINAL DATE OF THE ORDER: FEB 20 1998

UNDER 11 DCMR 3103.1, "NO DECISION OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16244

As Director of the Board of Zoning Adjustment, I certify and attest that on FEB 20 1998 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed blow:

Richardo Chavez
3666 New Hampshire Avenue., N.W.
Washington, D.C. 20010

James E. Carrico
324 12th Street, S.E.
Washington, D.C. 20003

Chairperson
Advisory Neighborhood Commission 1C
1728 Kalorama Road, N.W.
P.O. Box 21652
Washington, D.C. 20009

Attested By: Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

Date: FEB 20 1998

Attest/ljp